

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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: UNITED STATES, :  
: : NOT FOR PUBLICATION  
: :  
-against- : ORDER  
: :  
: 97-CR-301 (CBA)  
VERMAN O'HARO, :  
: :  
Defendant. :  
-----X  
AMON, UNITED STATES DISTRICT JUDGE:

On August 6, 1997, defendant Verman O'Haro was convicted in this Court, following a jury trial, of conspiracy to import and intent to possess narcotics with the intent to distribute. On August 14, 1998, O'Haro was sentenced to a term of imprisonment of 235 months and a term of supervised release of five years. Since that time, O'Haro has filed numerous motions seeking modification of his sentence.

On July 12, 2004, O'Haro petitioned for modification of his sentence pursuant to 18 U.S.C. § 3582. In an Order dated October 1, 2004, the Court denied that motion and advised O'Haro of the process for challenging the constitutionality of his sentence through a petition for a writ of habeas corpus, should he wish to do so. Specifically, the Court informed defendant that he would have to seek permission from the Court of Appeals for the Second Circuit, as a petition pursuant to 28 U.S.C. § 2255 would constitute a second or successive application.

On October 18, 2004 O'Haro moved for reconsideration of the Court's October 1, 1994 decision. On October 28, 2004, the Court issued an Order denying the motion and once again advised O'Haro that, should he wish to challenge the constitutionality of his sentence, he must seek permission from the Court of Appeals for the Second Circuit to file a second or successive application for a writ of habeas corpus.

On November 10, 2004, defendant filed yet another motion seeking permission to file newly discovered exculpatory evidence with this Court. The essence of the motion was a challenge to the constitutionality of his conviction and sentence. In denying the motion, the Court advised O'Haro once more that the only avenue of redress presently available to him by which to challenge the constitutionality of his sentence is an application for permission from the Court of Appeals for the Second Circuit to file a second or successive application for a writ of habeas corpus pursuant to 28 U.S.C. § 2255.

Now pending before the Court are two additional applications by O'Haro. On January 24, 2005, O'Haro filed a motion pursuant to Rule 52(b) of the Federal Rules of Criminal Procedure asking the Court to set aside his sentence and resentence him in light of Blakely v. Washington, 542 U.S. 296 (2004), and United States v. Booker, 125 S.Ct. 738 (2005). On April 27, 2005, O'Haro filed a letter motion asking the Court not to construe his Rule 52(b)

motion as having been brought pursuant to 28 U.S.C. § 2255. Rule 52(b) does not entitle O'Haro to the relief he seeks. U.S. v. Senape, 2003 WL 22004835, at \*1 (S.D.N.Y. Aug. 22, 2003) ("Rule 52(b) does not contain a procedural mechanism that can be used to challenge the validity of, or correct errors in, a sentence."). Accordingly, the Rule 52(b) motion is denied, and the Court reminds O'Haro one more time that any challenge he wishes to assert to the constitutionality of his sentence must be raised in an application for permission from the Court of Appeals for the Second Circuit to file a second or successive application for a writ of habeas corpus pursuant to 28 U.S.C. § 2255.

SO ORDERED.

Dated: Brooklyn, New York  
August 2, 2005

Carol Bagley Amon  
United States District Judge